

JAN 18 2006

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

EMILIO CEJA-ZAVALA, aka Andres
Daniel Ceja-Franco,

Defendant - Appellant.

No. 04-30206

D.C. No. CR-03-00135-002-TSZ

MEMORANDUM*

Appeal from the United States District Court
for the Western District of Washington
Thomas S. Zilly, District Judge, Presiding

Submitted January 9, 2006**

Before: HUG, O'SCANNLAIN and SILVERMAN, Circuit Judges.

Emilio Ceja-Zavala appeals from his guilty-plea conviction and 121-month sentence imposed for conspiracy to distribute methamphetamine, in violation of

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

** This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

21 U.S.C. §§ 841(a)(1), 841(b)(1)(A) and 846. We have jurisdiction under 28 U.S.C. § 1291, and we affirm the conviction and remand the sentence.

Ceja-Zavala contends that his guilty plea was unknowing and involuntary because had he known about the post-plea changes to sentencing law brought about by *United States v. Booker*, 543 U.S. 220 (2005) and *United States v. Ameline*, 409 F.3d 1073 (9th Cir. 2005) (en banc), he would not have entered the change of plea. His contention fails. *See United States v. Cardenas*, 405 F.3d 1046, 1048 (9th Cir. 2005) (stating that changes in sentencing law imposed by *Booker* do not render a pre-*Booker* guilty plea involuntary).

Nevertheless, because Ceja-Zavala was sentenced under the then-mandatory guidelines, we remand the case for further proceedings consistent with *Ameline*. *See United States v. Moreno-Hernandez*, 419 F.3d 906, 916 (9th Cir. 2005) (extending *Ameline*'s limited remand procedure to non-constitutional *Booker* error).

The conviction is **AFFIRMED** and the sentence is **REMANDED**.